in his name; the interest of the plaintiffs had not been mentioned therein.

Clearly, in this case the plaintiff was the one who entered into the contract with NCL for the sale to the latter of the 260,000 shares in Lian Bee; it was not a contract made by the legal owners of the shares as agents and trustees for him. None of the legal owners were parties to the contract he made with NCL. His obligation vis-a-vis NCL in relation to the sale was to deliver, on completion, certificates and properly executed transfers of the shares, which he did. In these circumstances, there is no question of the plaintiff joining any of the legal owners of the shares as a party in this action.

Claim allowed.

Solicitors: *YH Cheong*; *Lim Ganesh & Liu.*

Reported by *Terence Tan Bian Chye*

Seah Yit Chen v Singapore Bus Service (1978) Ltd & Ors

HIGH COURT (SINGAPORE) — SUIT NO 5165 OF 1986
YONG PUNG HOW J
14 MAY 1990

Damages (Personal Injury or Death) — Multiple injuries — Spine and knee injuries, osteoarthritis, scars and skin-grafting — Quantum of damages — Civil Law Act (Cap 43, 1985 Ed), s 9

Damages (Personal Injury or Death) — Assessment — Main injury giving rise to other related injuries — Itemizing various heads of damages — Risk of damages overlapping — Resulting over-compensation — Approaches taken by the courts in assessing damages

Damages (Personal Injury or Death) — Future cost of surgery, hospitalization and treatment — Whether recoverable — Whether consequential loss of earnings after surgery recoverable

Damages (Personal Injury or Death) — Special Damages — Whether cost of treatment by Chinese physician recoverable

Tort — Negligence — Road accident — Liability for damages

The plaintiff, then aged 21, was injured in a road accident while being a pillion rider on a motor scooter driven by the third defendant. The scooter was involved in a collision with a bus owned by the first defendant and driven by the second defendant. The plaintiff herself was not negligent and claimed damages for personal injuries and consequential loss suffered against all defendants. An agreement was reached as to the amount of damages to be awarded in respect of special damages and some items of general damage, leaving the court to decide the following:

(a) the quantum of general damages to be awarded in respect of injuries to the vertebra, tibia condyle and knee, osteoarthritis, scars and skin-grafting;

(b) whether special damages should be awarded for the cost of future spinal fusion surgery, including hospitalization and treatment charges, and for the consequential loss of earnings after such surgery;

(c) whether special damages should in principle be awarded to the plaintiff for the cost of treatment by a Chinese physician;

(d) whether the accident was caused solely by the negligence of the second defendant or by the negligence of the third defendant, or if both of them were contributorily negligent, how liability should be apportioned.

The defendants raised the issue of the possible overlapping of damages as some of the plaintiff's injuries were related and connected to others.

Held, finding the third defendant liable, and awarding damages as follows:

(1) In assessing damages, a court may either adopt a global approach and award a total amount to cover all injuries and claims; or a component approach and award separate amounts for each head of damage, which are then totalled; or even a mixed approach and award separate amounts for each head of damage which are then totalled and matched against a global award.

(2) The approach to be followed must necessarily depend on the facts of each case, bearing in mind the need to avoid overlapping. When the injuries sustained are related to the same part or function of the body, there should only be one award of damages, without any risk of overlapping: where the injuries sustained are to different parts of the body and affect different functions, as in the case where the plaintiff has sustained injuries to the knee and to the spine, it would be appropriate to make a separate award for each head of damage. In such cases, however, care would still have to be taken to avoid a further 'sub-itemizing' of a head of damage or injury.

(3) The plaintiff should not be deprived of the reasonable opportunity for at least some relief from pain which spinal fusion surgery may afford her in the future. As damages are awarded once and for all, she was awarded the agreed cost of future spinal surgery, hospitalization and treatment charges during the surgery and loss of earnings after surgery for three months.

(4) As regards the injury to the tibia, knee, the osteoarthritis, scars and skin-grafting, it was noted that the osteoarthritis had arisen from the injury to the knee, and similarly with the scars and the skin-grafting which had to follow. This being the case, separate awards would be no more than a sub-itemization of claims which should fall under one head of damage; if they are not to overlap, they must necessarily be merely a fraction of the total amount to be awarded for the total injury to the knee. It would be preferable to make one award for the fracture of the right tibia, taking into account in doing so, all the facts and circumstances, including the onset of osteoarthritis and the scars and skin-grafts.

(5) As to the plaintiff's claim for reduced prospects of marriage, no evidence other than her increase in weight was proferred to the court. The plaintiff suffered no facial injuries and was a pleasant looking girl whose confidence would have improved by the agreed plastic surgery. However, it was clear that her self-confidence had been adversely affected to some extent; this factor was taken into account in assessing the quantum of general damages to be awarded for the total injury to the knee.

(6) As to the claim for the cost of treatment by a Chinese physician, the test must be whether it was reasonable for the plaintiff to seek such traditional medicine and incur the ex-

penses, and the answer as to whether it was reasonable must depend on the facts of each case. There should be some evidence before the court that the traditional treatment was undergone on reliable advice, with a reasonable expectation of benefit, and not just on the impulse of the plaintiff. In this case, a proper claim under this head had not been proved as the plaintiff had already started with conventional physiotherapy and there was no evidence that she had received any reliable advice before she changed her mind and went to a Chinese physician on her own. There was also no evidence that she benefited in any way from this alternative treatment which she was readily persuaded to stop.

(7) On the plaintiff's claim for her alleged phobia towards motor cycles after the accident, there was no medical evidence to show that she suffered any more than the normal mental anxiety that would have been the natural reaction to such an accident. In the circumstances, the court could not take it into account either as a separate head of claim or as a reason for increasing the damages awarded.

(8) Total damages awarded to the plaintiff were as follows (agreed items are marked *):

General damages

(1) Injury, pain and suffering, and loss of amenities	
(a) vertebra	10,000
(b) tibia condyle, osteoarthritis, scars and skin-grafting	25,000
(2) Cost of future spinal fusion surgery	6,170*
Hospitalization and treatment during spinal fusion surgery	1,550*
Loss of earnings after spinal fusion surgery (3 months x $400 pm)	1,200*
(3) Cost of future knee surgery	2,500*
Hospitalization and treatment during knee surgery	1,500*
Loss of earnings after knee surgery (3 months x $400 pm)	1,200*
(4) Plastic surgery and loss of earnings after plastic surgery	18,000*
(5) Loss of future earnings, and loss of earning capacity	15,000*
Total General Damages	$82,620

Special Damages

(1) Outpatient charges	1,694.90*
(2) Hospital bills	14,873*
(3) Medical expenses at clinic	98*
(4) Transport	1,358*
(5) Clothing	25*
(6) Crutches	25*
(7) Loss of earnings from 1 December 1984 - 18 November 1989	7,000*
Total Special Damages	$25,073.90

(9) Interest at 3% pa on the loss of earnings of $7,000 was awarded from 1 December 1984 to the date of judgment. Interest at 6% was calculated on the amounts of $35,500 for the injury, pain, suffering and loss of amenities, and of $18,073.90 for the remaining special damages, from the date of the writ to the date of judgment.

(10) On the basis of the evidence given in court and the sketch plan, it appeared that the accident was caused solely by the negligence of the third defendant, and the second defendant was not to be blamed at all. The third defendant would therefore be liable to the plaintiff for the whole of the general and special damages, and for her costs to be taxed.

Cases referred to

1 *Hummerstone* v *Leary* [1921] 2 KB 664 (refd)
2 *Tan Bok Eng* v *Lim Meng Kok* [1988] 3 MLJ 63 (refd)
3 *Lim Poh Choo* v *Camden and Islington Area Health Authority* [1980] AC 174 (refd)
4 *Croke* v *Wiseman* [1981] 3 All ER 852 (refd)
5 *Lai Wee Lian* v *Singapore Bus Service (1978) Ltd* [1984] 1 MLJ 325 (refd)
6 *Ngooi Ku Siong* v *Aidi Abdullah* [1985] 1 MLJ 30 (refd)
7 *Monohar s/o Suppiah* v *Liew Sooi Sang* [1984] 1 MLJ lxxii (refd)
8 *Lau Kwi Sea* v *Goh Kwee Lim & Singapore Bus Service (1978) Ltd* [1989] BLD Yearbook 689 (refd)
9 *Jag Singh* v *Toong Fong Omnibus Co Ltd* [1964] MLJ 463 (refd)
10 *Saniah* v *Abdul Hamid* [1967] 2 MLJ 255 (refd)
11 *Mariam bte Mansor* v *JD Peter* (reported in Dass: *Quantum in Accident Claims*, Vol 1, p 254) (refd)
12 *Rubens* v *Walker* [1946] SC 215 (refd)
13 *Lo Tung* v *Chay Wing Shan* [1964] HKLR 444 (refd)
14 *Sreedharan Pillai* v *Joseph Yeung Kwok-fun* [1966] HKLR 366 (refd)
15 *Kwan Mei-king* v *Au Hong-keung* [1972] HKLR 352 (refd)
16 *Mui Ling-Kwan & Anor* v *Wong Yin-wah & Ors* [1973] HKLR 465 (refd)
17 *Kwok Mei-tai* v *Tang Yu-hand* [1978] HKLR 395 (refd)

Legislation referred to

Civil Law Act (Cap 43, 1985 Ed) s 9

Kee Lay Lian for the plaintiff.
Benedict Chan for the first and second defendants.
Jeanny Ng for the third defendant.

Cur Adv Vult

Yong Pung How J: On 16 November 1984 the plaintiff Seah Yit Chen, then 21, was a pillion rider on a motor scooter FB 8188H which was owned by the third defendant, and which he was riding along Alexandra Road in the direction of Jurong. At the junction of Alexandra Road and Tiong Bahru Road, the scooter was involved in a collision with a bus SBS 1000 which was owned by the first defendant and was driven by its servant or agent, the second defendant, along Alexandra Road but in the opposite direction just before the accident. The Alexandra Road and Tiong Bahru Road junction was controlled by traffic lights. At the time of the collision, the third defendant was travelling straight across the junction, while the second defendant was in the process of making a right turn from Alexandra Road into Tiong Bahru Road. As a result of the collision, the plaintiff sustained injuries and was hospitalized, the main injuries being a wedge compression fracture of the thoracic 12 vertebra, and a fracture of the upper end of the right tibia, resulting in continuing disability at the knee.

The plaintiff was not herself negligent, and therefore contends that one or more of the defendants is liable to compensate her in damages for the injuries and conse-

quential losses she has suffered: *Hummerstone* v *Leary*;[1] *Tan Bok Eng* v *Lim Meng Kok*.[2] The second defendant contends that she turned her bus only after the green arrow in the traffic lights had appeared in her favour, and that the third defendant beat the red light against him and in the circumstances failed to give way to her. The third defendant contends that the second defendant failed to give way to him and in turning right encroached on to his right of way.

Before and during the hearing, agreement was reached by the parties on the amount of damages to be awarded to the plaintiff in respect of some of her claims, and the details are set out below. This narrowed the issues for the decision of the court to the following:

(a) what are the general damages which should be awarded to the plaintiff in respect of the injuries and loss suffered by her under the headings of the vertebra, tibia condyle and knee, osteoarthritis, scars and skin-grafting;
(b) whether special damages should be awarded to the plaintiff for the cost of future spinal fusion surgery, including hospitalization and treatment charges, and for the consequential loss of earnings after such surgery;
(c) whether, as a matter of principle, special damages should be awarded to the plaintiff for the cost incurred by her of treatment by a Chinese physician;
(d) whether the accident was caused solely by the negligence of the second defendant or by the negligence of the third defendant or, if both of them were contributorily negligent, how liability should be apportioned.

The main injuries suffered by the plaintiff were to her spine and her knee, and as these injuries have led to several related claims under separate heads, the possibility of an overlapping in the damages to be awarded has been raised by counsel for the defendants. This is the risk that a plaintiff may be over-compensated as a result of the itemization of the heads of damage. In many accidents, the victim suffers multiple injuries. In assessing damages, a court may either adopt a global approach and award a total amount to cover all injuries and claims; or a component approach and award separate amounts for each head of damage, which are then totalled; or even a mixed approach and award separate amounts for each head of damage which are then totalled and matched against a global award. The case authorities which have been cited to me merely illustrate the difficulty which courts face in settling general guidelines to cover the vastly different factual situations which arise in practice, and with which they have to deal. The component approach appears to have been followed in most English cases since *Lim Poh Choo* v *Camden and Islington Area Health Authority*[3] and in *Croke* v *Wiseman*[4] at p 855, Lord Denning MR explained the ruling on this matter by the House of Lords in that case in the following words:

> They declared that, even in these cases, we must go by the current method of itemizing the various heads of damages. We must assess the cost of future care, loss of future earnings, pain, suffering and loss of amenities, as if they were separate causes of action. Then we must add the items together and award the total sum as damages, irrespective of any overlapping so long as it does not look outrageously high.

Broadly the same approach was followed in Singapore in *Lai Wee Lian* v *Singapore Bus Service (1978) Ltd*;[5] but at about the same time in *Ngooi Ku Siong* v *Aidi Abdullah*,[6] the Federal Court of Malaysia disapproved a High Court decision in which damages for some connected injuries had been assessed separately and not together. In my opinion, which approach is to be followed in each case must necessarily depend on the facts of the case, bearing in mind the need to avoid overlapping. When the injuries sustained are related to the same part or function of the body, there should only be one award of damages, without any risk of overlapping: where the injuries sustained are to different parts of the body and affect different functions, as in the instant case where the plaintiff has sustained injuries to the knee and to the spine, it would be appropriate to make a separate award for each head of damage. In such cases, however, care would still have to be taken to avoid a further 'sub-itemizing' of a head of damage or injury.

In this case, the accident occurred on 16 November 1984. Since then the plaintiff has received periodic medical attention from Dr VP Kumar, a consultant orthopaedic surgeon at the National University Hospital, who has followed her progress and was able to give evidence before this court. Fortunately for the plaintiff, the evidence shows that the fracture of the vertebra has healed well: there is no deformity, the range of movement is full, and there is no consequential interruption of other bodily functions. I was referred by counsel for both the plaintiff and the defendants to a considerable range of awards in previous cases involving injuries to vertebrae. As previous awards are not binding precedents as to the amounts to be awarded in later cases, I shall not list them, but, bearing these previous awards in mind as helpful indicators, I am of the opinion that $10,000 would be an appropriate award under this head.

What is also in issue arising from the fracture of the vertebra is the complaint by the plaintiff of backache and pain, and the resulting suggestion that she should undergo spinal fusion surgery to deal with this complaint. On this, the parties are in agreement as to what the costs would be for such surgery, including hospitalization and treatment, and also the consequent loss of earnings, but are unable to agree on the need and therefore the liability for it. Evidence on this matter was given by two doctors who were

not in agreement on the need or advisability for this surgery. Dr Kumar described the complaint as an occasional backache, or as mild pain which should be bearable; but he explained that there has been degeneration of the spine, and pain due to this degeneration. The plaintiff's condition will progressively worsen, and spinal fusion surgery will be necessary in the future to fuse the injured vertebra to the vertebrae next to it, so that there will be no further movement in that area, which will alleviate the backache and pain.

Dr Robert Don, a consultant specialist in rehabilitative medicine who was previously the head of the Department of Rehabilitative Medicine at Tan Tock Seng Hospital, was called by the defence. He agreed that there has been degeneration, a development which would occur even with a normal person, but he was of the opinion that a continuation of conservative treatment would be preferable to surgery, which the symptoms that he saw did not justify. In particular, he noted that, in a test which he carried out, the plaintiff had no difficulty getting up from a supine position after lying down. On this point, however, the plaintiff explained later that on the day of the examination by Dr Don she had taken an anti-inflammatory tablet, diclofenac, to reduce the pain; and the bench on which she had to lie down during the examination was inclined and she had no difficulty getting up because of that.

In reviewing the differing evidence of Dr Kumar and Dr Don on the necessity or advisability of spinal fusion surgery, I am of the opinion that Dr Kumar's evidence is to be preferred in this case. Of the two, he has been in the better position to form an opinion on the matter, after some five years of close observation of the plaintiff's medical progress, whereas Dr Don was called in almost at the eleventh hour, did not have the advantage of seeing the X-ray films of the injuries, and was only able to see the plaintiff once. Both doctors agree in fact that the plaintiff suffers pain at times, and that this is in a way a subjective sensation, the intensity of which is felt differently by different people. What is also a fact in this case is that, since the accident in 1984, the plaintiff has been continually complaining of pain. So far, she appears to have borne this pain almost stoically, but it need hardly be said that parties defending claims for injuries inflicted by them should not expect to be absolved from liability for damages by relying on their victims having a high threshold of pain. In my judgment, she should not be deprived of the reasonable opportunity for at least some relief from pain which spinal fusion surgery may afford her in the future. As damages are awarded once and for all, she should be awarded now the agreed cost of future spinal surgery of $6,170; hospitalization and treatment charges during the surgery of $1,550, at $155 per day for ten days; and loss of earnings after surgery of $1,200, at $400 per month for three months.

The plaintiff also sustained an open comminuted intercondylar fracture of the upper end of the right tibia. As a result of this injury, she had to undergo four operations, and was hospitalized four times for a total of 58 days. She was on crutches for three months, before undergoing physiotherapy for another seven months. Osteoarthritis had already set in by 1986, less than two years after the accident, when she was only 23 years old, and the pain is likely to worsen with time. Dr Kumar has recommended further surgery, an osteotomy, and the defendants have agreed that this operation is necessary. The operation should then reduce the pain she is experiencing by some 80 percent. In the long term, further surgery may be called for, if the pain worsens. Before the accident, the plaintiff was an active person, having played basketball and volleyball, and having even won an array of trophies for sports activities while in school. After the accident, however, the range of movement of her right knee has been restricted; although it has improved over time, it was still only O degree to 85 degree on 12 December 1987 when this aspect was examined by Dr Kumar. Even now she is unable to walk long distances, and can only manage stairs with difficulty. As she cannot squat or bend down, she cannot do certain housework like washing floors, and for the same reason she has problems in using the toilet.

On the quantum of damages, counsel for the plaintiff cited *Monohar s/o Suppiah* v *Liew Sooi Sang*[7] and other cases in which damages have been awarded for tibia injuries, for osteoarthritis and for scars left by injuries. In particular, I was urged to award damages under separate heads for each of these items. Counsel for the defendants referred me in turn to six cases, particularly *Lau Kwi Sea* v *Goh Kwee Lim & Singapore Bus Service (1978) Ltd*,[8] which was a decision of a district court in 1988 in which general damages of $12,000 for what appears to be similar injuries to a knee took into account the onset of osteoarthritis. In *Jag Singh* v *Toong Fong Omnibus Co Ltd*,[9] Lord Morris said at p 465:

> It need hardly be emphasized that caution has to be exercised when paying heed to the figures of awards in other cases. This is particularly so where cases are merely noted but not fully reported. It is necessary to ensure that in main essentials the facts of one case bear comparison with the facts of another before any comparison between the awards in the respective cases can fairly or profitably be made.

As all the cases which were cited to me were only bare digest summaries, it has been necessary for me to consider their awards with caution, although they have been helpful as trend indicators. In the instant case, osteoarthritis has arisen from the injury to the knee, and similarly with the scars and the skin-grafting which had to follow. This being the case, separate awards would be no more than a sub-itemization of claims which should fall under one head of damage; if they are not to overlap, they must necessarily be merely a fractionation of the total amount to be awarded for the total injury to the knee. It would be preferable in my opinion to make one award for the

fracture of the right tibia, taking into account in doing so all the facts and circumstances, including the onset of osteoarthritis and the scars and skin-grafts which have been brought to the court's attention.

Arising from the scars, the court was urged by counsel for the plaintiff to take into account the possibility that these scars, together with other injuries, have reduced the plaintiff's prospects of marriage. In *Saniah* v *Abdul Hamid*[10] and *Mariam bte Mansor* v *JD Peter*,[11] the reduced prospects of marriage were taken into account by the court. In the instant case, the plaintiff was 21 at the time of the accident and is now 26 and still single. It was suggested to the court that a boyfriend broke off with her after the accident, because he was unable to accept her scars; but she admitted in cross-examination that this was no closer relationship than that of an ordinary friend. Much was made of her increase in weight to 74 kg after the accident, but she was a big girl even before then, weighing 68 kg. Having regard presumably to the sensitivity of such a subject, no other evidence on the subject was proffered to the court. I noted from her appearance in court that she has fortunately suffered no facial injuries and, as her own counsel put it to me, she is pleasant looking; with the plastic surgery which has been agreed, her own confidence should improve. It is clear, however, that the plaintiff's confidence in herself in such a matter has been adversely affected to some extent, and I have taken this factor into some account in assessing the quantum of general damages to be awarded to her for the total injury to her knee. Having regard to all these considerations, the appropriate award under this head of damage would be $25,500.

Special damages of a relatively insignificant amount of $240 have also been included in the statement of claim by the plaintiff, to cover the cost of treatment provided to the plaintiff by a Chinese physician. Special damages are the additional expense and loss, in terms of money, which have actually been incurred up to the date of the trial. Since plaintiffs are entitled to recover all expenses reasonably incurred by them in the treatment of their injuries, these expenses in practice include fees for medical advice and for surgical operations, the cost of treatment and care in a hospital, and the cost of surgical appliances and of drugs and other prescriptions. Even where medical diagnosis and advice prove to have been wrong, and plaintiffs have acted on them, the expenses incurred by them are admissible, if the advice has been taken in good faith from a reputable medical practitioner: *Rubens* v *Walker*.[12] No local case authority was cited to me on the subject of Chinese physicians, but counsel for the plaintiff cited five cases from Hong Kong: *Lo Tung* v *Chay Wing Shan*;[13] *Sreedharan Pillai* v *Joseph Yeung Kwok-fun*[14] (amount agreed for herbal treatment in India); *Kwan Mei-king* v *Au Hong-keung*[15] (expenses allowed for herbs and treatment by a bone setter which did not 'overlap' the previous conventional treatment, since after one month's treatment the plaintiff regained the ability to walk very short distances with a stick, after she had been discharged as incurable and unable to walk after three months in hospital); *Mui Ling-kwan & Anor* v *Wong Yin-wah & Ors*[16] (sums allowed by the Court of Appeal as special damages for special food); and *Kwok Mei-tai* v *Tang Yu-hand*[17] (reasonable sum allowed for traditional medicines).

The test in any such case must be whether it was reasonable for the plaintiff to seek such 'traditional' treatment and incur the expenses, and the answer as to whether it was reasonable must depend on the facts of each case. There should be some evidence before the court that the traditional treatment was undergone on reliable advice, with a reasonable expectation of benefit, and not just on the impulse of the plaintiff. This would be especially relevant if the traditional treatment were to overlap a course of conventional treatment, as a plaintiff should not normally be entitled to recover the expenses of both forms of treatment undergone at the same time. Clearly, the total amount expended must not be extravagant or excessive, as the plaintiff cannot be permitted to throw on to the defendant expenses which cannot be said to be either necessary or appropriate for the treatment of the injuries suffered.

In the instant case, the plaintiff was medically advised to go for physiotherapy in October and November 1985. Physiotherapy, however, can be painful, and it was in this case. So, instead of continuing with it, she went to a Chinese physician for some alternative form of massage treatment, doing this 24 times on alternate days. It was, she said, also cheaper at $10 a time compared to the $12 a time that she was paying for physiotherapy. In Singapore, there appear to be several groups of Chinese physicians, the largest of which, the Singapore Chinese Physicians' Association, claims to have 879 members (*The Straits Times* 24 February 1990), and is endeavouring to improve the regulation of its membership, including the training of its members through facilities provided by a training college (*The Straits Times* 23 April 1990). None of the Chinese physicians are subjected to legislative control, however, unlike doctors and professionals in other disciplines. In the instant case, she has already started with conventional physiotherapy and there is no evidence that she had received any reliable advice before she changed her mind and went to the Chinese physician on her own; there is also no evidence that she benefited in any way from this alternative treatment, and she was readily persuaded to stop it by Dr Kumar telling her that these visits to the Chinese physician would not help her to bend or squat. On the facts of this case, I am of the view that a proper claim has not been proved.

Before leaving the subject of damages, it is necessary to consider one other claim for damages which has been

made by the plaintiff: this arises from her alleged phobia towards motor cycles after the accident. It was the first time the plaintiff had ever been on a motor cycle, and the court was told that the serious injuries which she sustained have caused her to develop a phobia towards this form of transport to the extent that she would not want to ride on a motor cycle again. She has even had nightmares involving motor cycles. Neuroses, phobias and other psychic disorders arising from accidents which can be recognized as illnesses in themselves may well be causes of claims for damages; where such disorders supervene after an accident, they can be taken into account in awarding aggravated damages for the main injuries for which damages are claimed. In the instant case, however, there was no medical evidence to show that she suffered any more than the normal mental anxiety that would have been the natural reaction to such an accident. Neither is it possible from the evidence to consider that she would have any need or occasion to ride on a motor cycle again, even if she had not had the accident. In the circumstances, I have not felt justified to take it into account either as a separate head of claim or as a reason for increasing the damages already awarded.

Before and during the hearing, agreement was reached by the parties on the amount of damages to be awarded to the plaintiff in respect of some of her claims. Together with the damages now awarded to her by the court, they are set out below.

General Damages	$
(1) Injury, pain and suffering, and loss of amenities	
(a) vertebra	10,000
(b) tibia condyle, osteoarthritis, scars, and skin grafting	25,500
(2) Cost of future spinal fusion surgery	6,170*
Hospitalization and treatment during spinal fusion surgery	1,550*
Loss of earnings after spinal fusion surgery (3 x $400 pm)	1,200*
(3) Cost of future knee surgery	2,500*
Hospitalization and treatment during knee surgery	1,500*
Loss of earnings after knee surgery (3 x $400 pm)	1,200*
(4) Plastic surgery and loss of earnings after plastic surgery	18,000*
(5) Loss of future earnings, and loss of earning capacity	15,000*
Total general damages	$82,620

Special Damages	
(1) Outpatient charges	1,694.90*
(2) Hospital bills	14,873*
(3) Medical expenses at clinic	98*
(4) Transport	1,358*
(5) Clothing	25*
(6) Crutches	25*
(7) Loss of earnings from 1 December 1984 - 18 November 1989	7,000*
Total special damages	$25,073.90*

(Items for which the amounts were agreed by parties are marked *.)

Section 9 of the Civil Law Act (Cap 43, 1985 Ed) gives power to the court to award interest on damages. Interest should be calculated at 3% pa for the loss of earnings of $7,000 from 1 December 1984 to the date of judgment. Interest should be calculated at 6% pa on the amount of $35,500 for the injury, pain and suffering and loss of amenities, and of $18,073.90 for the remaining special damages, from the date of the writ, 1 October 1986, to the date of judgment.

There remains the question of liability — whether it was the second defendant driving the bus or the third defendant riding the scooter who caused the accident, or, if both of them contributed to it, in what proportion each was to blame. The second defendant was in fact undergoing a driving test at the time, and her case was based on her evidence and that of an SBS driving tester who was seated beside her, whose evidence corroborated her own evidence on material aspects. Both of them appeared in the witness box to be straightforward people, who gave direct answers as best they could to the questions asked of them. According to them, her bus had been travelling along the extreme left lane of Alexandra Road, which is a three-lane highway. About 100m from the junction with Tiong Bahru Road, the tester instructed her to make a right turn at the junction into Tiong Bahru Road. She filtered her bus over to the extreme right lane of Alexandra Road, and then entered the junction, the traffic lights ahead of her at the junction being green. At the centre of the junction, she brought the bus to a halt, awaiting the green arrow to appear on the traffic lights to allow her to turn right, the oncoming traffic from the opposite direction on Alexandra Road having been stopped. In that stationary position at the centre of the junction, she noticed vehicles coming from the opposite direction pulling to a stop against the traffic lights on the other side of Alexandra Road. Of these vehicles, a bus, later identified to be SBS 1221, had stopped in the extreme left lane. Beside it, in the middle lane, a red motor car stopped. Another SBS bus, running Service No 12, on the right of his motor car, started to turn to its right into Tanglin Road. The green arrow showed, whereupon she started her own turn to the right. As she began to move, the collision took place. It all happened very quickly. She did not see the scooter at all before the collision. Her evidence in court was not materially different from the version in her police report, which she made a few hours after the accident.

The third defendant, who is or was a part-time policeman and obviously not unfamiliar with some of the processes of the law, gave evidence on his own behalf in an articulate manner and with considerable self-assurance. His case was that he was riding his scooter along Alexandra Road towards the same junction, but in the opposite direction. His intention was to go straight across the junction and continue travelling along Alexandra Road. Riding pillion with him was the plaintiff, who was an acquaintance whom he had met earlier and to whom he had offered a lift. He was travelling in the middle of the three lanes, with other vehicles on his left and right. He was slightly ahead of these other vehicles. He first saw the traffic lights at the junction when he was about 100m from them. As he came to them, they were still green and his intention was to cross the junction before the traffic lights turned against him. He admitted that he was travelling at a speed exceeding the speed limit. At this time, he was not sure if there were vehicles which had entered the junction ahead of him, as he was concentrating his attention on the traffic lights. He did notice, however, that there were vehicles coming down Alexandra Road on the opposite side. He did not see SBS 1000 among these vehicles. When he entered the junction, there were no other vehicles within the junction, and he was travelling in a straight direction, without any deviation to the left or right. While in the junction, a vehicle suddenly collided into his right side. This happened so quickly that he did not see the vehicle before it hit him. The vehicle turned out to be SBS 1000 driven by the second defendant. The scooter fell on to the kerb on the left and both he and the plaintiff were seriously injured. Some four and a half months after the accident, he lodged a police report which was not materially different from his evidence in court. However, his version of events on the crucial issue of the state of the traffic lights could not be corroborated by the plaintiff who was riding pillion.

Almost the only common factor in the conflicting evidence of the second and third defendants was that neither of them saw the other before the actual collision. This is not an unusual situation in accident claims which end up in the courts, having regard to the speed at which events can escalate into an accident. In the instant case, the accident took place five years ago and recollections tend to be less reliable with the passage of time. The two versions cannot stand together, however, and the court has the task of deciding on the totality of the evidence which of the two versions is more likely to be the correct one. In doing so, the court has to consider not only the evidence of the witnesses, but also the surrounding physical evidence, and all other circumstances which can reasonably have a bearing on the question of veracity.

The second defendant's case was attacked by counsel for the third defendant on the grounds that the second defendant was an inexperienced driver and had failed to keep a proper look out, since she did not see the scooter before the accident; that the evidence of the tester who was seated beside her was obviously biased as they both worked for the same employer, and also that his evidence on distances at the time of the accident was equivocal. In my opinion, these criticisms were not serious as they did not relate to the ultimate issue, which was the state of the traffic lights at the times. On this issue, one witness whose evidence was not challenged was the driver of SBS 1221. Although he also worked for the same employer as the second defendant and the tester, he did not know either of them, given the size of the company and the large number of its employees. He was in fact a very reluctant witness who clearly would have preferred not to be involved; even at the scene of the accident, he did not respond to a request from the tester for help, and had left the scene without leaving his particulars. When he was finally traced by the police, he had tried to avoid further involvement by denying knowledge of the accident on the ground that he did not see the collision, because he had stopped his bus at the traffic lights and happened to have lowered his head when the accident occurred. He was in this sense as independent a witness as it was possible to have. What he did say, however, was significant; it was that, as his bus which was in the extreme left lane approached the junction, the traffic lights were about to turn red against him. He therefore slowed his bus and brought it to a stop at the traffic lights, after which he lowered his head and only then heard the sound of collision. Like the second defendant, he saw a motor car on his right, in the middle lane, which had stopped; but he never saw any motor cycle.

In my judgment, the correct inference to be drawn from his evidence is that the third defendant could not have been ahead of SBS 1221, and that he passed this bus and the traffic lights after he should have stopped. If he had been slightly ahead of the other vehicles on his left and right, if the traffic lights still showed green, and if SBS 1000 had then appeared suddenly to collide into him, it would have been reasonable to expect a multiple collision involving some of the other vehicles as well.

At the hearing, the bundle of documents included a sketch plan prepared by the police officer who arrived at the scene shortly after the accident and before the vehicles were removed. It will be recalled that the evidence of the third defendant was that he was travelling in the middle lane and was going across the junction in a straight direction, without any deviation to the left or right. Although the sketch plan was not drawn to scale, the final position of the scooter, as shown by the plan to be on the kerb, was such that the only reasonable inference that can be drawn from it is that either the third defendant was riding his scooter in the extreme left lane between SBS Bus 1221 and the kerb, and hence was not seen by the driver of that bus, or that he was in the middle lane and swerved to the left at the last moment to avoid SBS 1000.

In my judgment, the third defendant was in fact travelling in the extreme left lane near the edge of the road from where his view of the junction was blocked by SBS 1221. The plaintiff was in a hurry to get to Jurong, as she admitted to the second defendant immediately after the accident when she was still in a daze. The third defendant, who was giving her a lift, was therefore travelling at a speed in excess of the speed limit. Just before he reached the junction, the traffic lights turned against him. He was then unable to stop, but he thought there was time to cross the junction, went into the junction, and then collided with the bus as it was beginning to turn, with disastrous consequences to himself and the plaintiff. The accident was caused solely by his negligence, and the second defendant was not to be blamed at all. The fact that she did not see the scooter before the collision is explained by her having turned her attention towards the right, after the green arrow had appeared and she had begun to turn her bus to the right. The third defendant will therefore be liable to the plaintiff for the whole of the general and special damages, and for her costs to be taxed.

Order accordingly.

Solicitors: *Rajah & Tann; Goh Poh & Partners; Jeanny Ng.*

Reported by *Azra Moiz*

Public Prosecutor v Koh Swee Beng

HIGH COURT (SINGAPORE) — CRIMINAL CASE NO 1 OF 1989
CHAN SEK KEONG J AND TAN TEOW YEOW JC
20 APRIL 1990

Criminal Law — Murder — Grave and sudden provocation — Whether accused lost self-control — Accused's code of honour required him to take revenge — Penal Code (Cap 224, 1985 Ed), s 300

The accused was charged with murder under s 302 of the Penal Code. The deceased died from two stab wounds inflicted by the accused, either of which in the ordinary course of nature would have been sufficient to cause death. The accused claimed that he acted under grave and sudden provocation. He had heard that the deceased had assaulted T, whom he (the accused) treated like his own father as T is his sworn brother's father. The accused stated that he practised a code of conduct which required him to come to the aid of his sworn brothers or his family, no matter what the consequences were. The accused also claimed that he was provoked when the deceased abused him in Hokkien. It was submitted that in the society in which the accused lived, based on his past experiences and his code of honour, any reasonable man in his position would have been provoked and acted in the way that the accused did.

Held, convicting the accused:

(1) Considering the circumstances in which the wounds on the deceased were inflicted (during a struggle in which six persons were assaulting the deceased), the court was of the view that the accused intended to stab the deceased, and he did so with considerable force. The injuries inflicted were sufficient in the ordinary course of nature to cause death.

(2) The prosecution had thus proved beyond reasonable doubt that the accused's actions fell within limb (c) of s 300 of the Penal Code.

(3) The evidence also showed that when the accused first heard of the assault on his family, he did not lose self-control entirely but had the presence of mind to arm himself with a knife. When he confronted the deceased, he had the presence of mind to tell another person to snatch stools from the deceased.

(4) When the accused caught up with the deceased, the latter was struggling on the ground against the assault of four or five persons. When the accused stabbed the deceased, the latter did nothing that could be considered as provocative to an ordinary reasonable person, taking into account the accused's age and class of society from which he came. The other persons assaulting the deceased did not lose their self-control. The collective injuries they inflicted were not serious in comparison even with the non-fatal injuries inflicted by the accused.

[*Editorial Note*: The accused has appealed to the Court of Criminal Appeal vide Criminal Appeal No 6 of 1990.]

Legislation referred to
Penal Code (Cap 224, 1985 Ed) ss 299, 300

Lee Sing Lit for the Public Prosecutor.
Kelvin Lim for the accused.

Cur Adv Vult

Chan Sek Keong J (delivering the judgment of the court): You, Koh Swee Beng, is charged with the murder of one Tay Kim Teck ('the deceased') on 16 February 1988 at about 4.12pm at Block 66, Jalan Tiong, Singapore, an offence punishable under s 302 of the Penal Code (Cap 224, 1985 Ed).

The prosecution has adduced the following evidence in connection with the killing of the deceased. On 16 February 1988, which was the eve of Chinese New Year, one Tan Ai Soon ('TAS'), who was then living at Block 55, Lengkok Bahru #12-431, was assaulted by the deceased at about 4pm during a card game known as 'See Kee Puay' which was being played in the market situated in Block 55A. He suffered injuries to his nose and his ribs. An unknown male Chinese helped TAS back to Block 55, and there TAS was met by his future son-in-law, one David Poi Thiam Eng. TAS was then smelling of liquor and bleeding from the mouth and his eyes were swollen. David and the other male Chinese then brought TAS back to his flat. At that time, the following persons were in the flat: TAS's wife, his three sons and two daughters, viz Tan Eng Poh ('Ah Poh'), Tan Eng Geok ('Ah Geok'), Tan Eng Chai ('Ah Chai'), Tan Eng Suan and Tan Eng Eng. TAS